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SUBJECT: SWAZILAND 2009 AGOA ELIGIBILITY REVIEW

REF: STATE 97769

Country: SWAZILAND
Current AGOA Status: Eligible

¶1. Country Background Summary: Swaziland is a small, land-locked country with one of the most limited economies in southern Africa. Its predominately young and rural population is beset by many challenges; foremost among them are widespread poverty and unemployment, along with one of the highest rates of HIV/AIDS infection, which negatively affects the whole society. Initiatives such as AGOA encourage Swazi leaders to put in place essential policy reforms in order to take advantage of a valuable U.S. export opportunity -- reforms that improve the quality of investment policy, encourage much needed foreign direct investment, and strengthen economic development.

¶2. The Government of the Kingdom of Swaziland (GKOS) has made some progress implementing constitutional provisions and improving governance and rule of law, but traditional leaders often resisted these developments, and progress is fragile.

¶3. With regard to enterprise and business development, Swaziland's apparel industry has declined over the year due to the international economic crisis. Some textile companies have closed and others have periodically laid off workers. In September 2009, Parliament sent the Employment Bill of 2007 back to various stakeholders for further deliberation. It proposes the repeal of the Swaziland Employment Act of 1980 and establishes minimum conditions for employment, consolidates local laws governing employment, and brings Swazi law into compliance with the requirements of the International Labor Organization (ILO).

¶4. Government completed appointment of members to the Anti-Corruption Commission and the Commission is reviewing cases, although there have been no prosecutions to date. The Ministry of Finance has conducted seminars to educate and train stakeholders in combating corruption, especially regarding procurement, for business people who deal with government.

¶5. Swaziland's Central Statistical Office's 2007 Demographic and Health Survey reported an overall HIV prevalence rate of 26 percent, based on the most accurate methodological survey of the Swazi population used to date. This daunting statistic represents one of the (or the) world's highest HIV/AIDS prevalence rates, in a population of approximately one million. The population of orphaned and vulnerable children is estimated at over 110,000, more than one tenth of the total population, and life expectancy stands at less than 40 years. The prevalence of HIV in pregnant women, at 42 percent, has increased since the 2005 survey was conducted. The 2007 census results reveal an emerging picture of negative population growth and increasing dependency ratios, with 44 percent of the population under 15 years old, which threatens the cultural and economic fabric of Swazi society.

16. Comments on Eligibility Requirements

1I. Market-based Economy

1A. Major Strengths Identified

-- Swaziland is a member state of the Common Market for Eastern and Southern Africa (COMESA), the Southern Africa Development Community (SADC), and the Southern African Customs Union (SACU).

-- Swaziland is a small, stable, free market economy with relatively little government intervention, although government leaders have significant private business interests.

-- The GKOS encourages foreign investment and is publicly committed to job creation.

-- The 2007 Swaziland Electricity Act outlawed the Swaziland Electricity Board's previous monopoly.

-- In 2008, Parliament passed the Companies Bill, a comprehensive statute that removes obsolete regulations from the previous law of 1912, including unnecessary regulations on small-medium enterprises; establishes an office of the registrar of companies within the Ministry of Commerce, Industry, and Trade, instead of in the Ministry of Justice and Constitutional Affairs, as was previously the case; introduces corporate governance and responsibility; introduces disclosure requirements; and works to ensure that Swaziland's corporate law is in harmony with regional and international agreements.

-- The textile sector is relatively stable and employs thousands of Swazi citizens, primarily women, although it has experienced a decline over the past year.

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1B. Major Issues/Problems Identified

-- In addition to poor policy and administrative coordination, Swaziland suffers from a general lack of procedural transparency and a lack of clear, up-to-date guidance for business.

-- There are several barriers to investment in Swaziland. The primary obstacle is the very complicated procedure for starting a business. In August, USAID completed an audit of progress made by Swaziland on the USAID-funded 2005 Investor Road Map, and found that the GKOS had implemented some, but not most, of its 2005 recommendations. The audit found three main areas that impede investment in Swaziland: lack of transparency of procedures, the length of time required to start a business, and the need for greater coordination among the various offices involved in foreign investment.

-- Land designated as Swazi Nation land cannot be used as collateral on loan applications, yet in most cases it is all that is available for use outside cities. This constrains lending to both individuals and enterprises, stifling business development.

-- The Swazi banks are not equipped to monitor investments and have been unwilling to invest in higher risk SMEs. Under a 2008 USAID loan guarantee program, two banks are being encouraged to make loans to riskier SMEs. Few such loans have been approved to date.

-- The proposed Trading Licenses (Amendment) Bill and the Shop Trading House Bill, were published in the Gazette in July, a necessary step prior to full consideration by Parliament, but still have not been voted upon. The Trading Licenses Bill would reduce from 21 days to seven the number of days a new business must advertise its intent to open before a license can be granted, and a business in the informal sector would be excluded from this altogether. The Shop Trading Bill would allow retail trading beyond the hour of 5 p.m. and on all days of the week, including holidays, except one, Incwala Day.

-- The Swaziland Posts and Telecommunications Department (SPTC) gave MTN, a cell phone service provider, monopoly rights for ten years to operate cellular telephone services within the Kingdom in 1998. The SPTC itself, along with some private companies, now have plans to operate competitive mobile systems, but have run into roadblocks, reportedly because of royal proprietary interests in MTN.

II. Political Reforms/ Rule of Law /Anti-Corruption

1A. Major Strengths Identified

-- The Swazi judiciary is perceived locally as independent and impartial. The Embassy has no knowledge of judicial interference.
-- The Prevention of Corruption Act was signed into law in July 2006 and came into effect on February 6, 2007. In April 2008, the Anti-Corruption Commission was re-established with a new commissioner, and in 2009 new Commissioners were appointed. However, there have been no prosecutions yet, though several complaints have been filed with the Commission. The Commission is still establishing its operating procedures and scope of authority.

-- Parliamentary elections were conducted peacefully in September 2008. The Constitution, which came into effect in 2006, does not mention political parties, but authorizes freedom of association. Candidates for the Parliamentary seats competed as independents.
-- On July 31, the GKOS passed the Leadership Code of Conduct law, requiring leaders of institutions to declare their assets when taking key government positions.

1B. Major Issues/Problems Identified

-- The King is Head of State in addition to being head of the government's Executive Branch. He appoints 10 of the 65 members of the House of Assembly, 20 of the 30 members of the Senate, and the entire Cabinet. The other ten Senators are elected by the House. The King has legislative authority to dissolve Parliament and signs bills into law (without which they are effectively vetoed).
-- Swaziland has a dual judiciary system - civil/criminal and traditional. The King changed the traditional hereditary claim to tribal chief positions. He now reserves the authority to appoint and dismiss the approximately 340 traditional chiefs who preside over their regions. The chiefs have local authority in specific areas and preside over legal cases/issues including land access and use, dispute resolution, family problems, and divorce. An attempt to codify traditional law was suspended because it was evident that there was little consistency anymore in application of traditional practices. Cases judged by traditional law can be appealed to a civil court.
-- The size of the judiciary is inadequate for the workload.
-- The legislative branch has not passed laws to enforce all of the provisions of the 2006 constitution. The mandated number of women in Parliament, and special election called for when the quota is not

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met, has been promised in the 2010 session.

-- The mandated Commission on Human Rights has been appointed, although it requires additional legislation to carry out its work.

-- The Land Management Board was established, but has not been assigned to a ministry. The King announced the creation of the new Minerals Board without repealing the former Board.

-- There are persistent allegations of police abuse of authority and excessive use of force. There are also "community police" who generally enjoy impunity from charges of abuse they too frequently utilize themselves when apprehending someone, and condone in others, especially in domestic violence cases.

-- The government lacks transparency. There is no law permitting public access to government documents, and public documents are difficult to access.

-- Corruption is widespread, and although investigations are frequently reported, little is heard thereafter. The Minister of Finance said a private consultant's report estimates 6 million USD (40 million emalengeni) of potential government revenue is lost each month due to corruption. The Minister believes much of this is lost tax revenues due to goods smuggled into and through Swaziland.

-- Allegations of arbitrary arrest and lengthy pretrial detention remains a problem. There are media reports of suspects detained in prison from one to three years as they await trial.

III. Poverty Reduction

1A. Major Strengths Identified

-- The GKOS hopes to expand employment opportunities, and endeavors

to revitalize the SME Sector with a focus on diversifying agriculture products and developing the tourism industry.

-- GKOS expenditures on education and health account for over 30 percent of the 2008-2009 budget, with 11.5 percent allocated to health (an increase of one percent) and 19 percent to education and training. -- Donor support for health programs (including the USG, Global Fund, UN, other bilateral, foundation, and corporate) is still very strong, in fact greater in dollar terms than the GKOS.

-- In April 2008, the GKOS launched the Poverty Reduction Strategy and Action Plan. The Ministry of Economic Planning and Development has established a Poverty Reduction Unit.

-- GKOS has begun implementing universal free primary education. Grade one and two students registered for free primary education in 2010 will not be required to pay school fees. Most school fees for orphaned and vulnerable children are paid by the GKOS, though administrative problems are great. Many college students are enrolled through GKOS scholarships.

1B. Major Issues/Problems Identified

-- According to the World Food Program, 66 percent of the population lives below the poverty line and the unemployment rate is 40 percent.

-- The HIV/AIDS crisis and the periodic droughts undermine GKOS efforts to fight poverty.

-- Basic education remains under-funded, although the GKOS provides free textbooks for primary schools. Qualified teachers are insufficient, though it is reported their ranks will be supplemented by university graduates who are not education majors.

-- Corruption in the procurement of drugs and administration of the school funds negatively attests to the state of delivery of health and education services in the country.

IV. Workers' Rights/ Child Labor/ Human Rights

1A. Major Strengths Identified

-- With some exceptions, workers have the constitutional right to form and join a trade union and bargain collectively. The Industrial Relations Act allows employees not engaged in essential services to participate in peaceful protest actions.

-- Swaziland has ratified all eight of the ILO core labor rights conventions, including Convention 138 on minimum age and Convention 182 on the worst forms of child labor.

-- The Industrial Relations Act was amended to be in line with ILO conventions. GKOS has ratified ILO conventions 29 and 105 that prohibit forced or compulsory labor. GKOS and labor unions have worked with the U.S. Department of Labor on projects to improve labor standards and eliminate the worst forms of child labor.

-- The three major labor unions operate with little government interference.

-- The government generally respects freedom of religion.

1B. Major Issues/Problems Identified

-- The Constitution provides for freedom of assembly and

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association, but the government has limited these rights in practice.

-- The garment exporters' association was dissolved in 2008, which made it difficult for unions to collectively bargain on behalf of the workers under the umbrella organizations of the employers. Workers must now negotiate with each company individually.

-- There continue to be allegations that women who tried to take maternity leave were dismissed, that employers paid employees at casual or probationary wage scales regardless of their position or length of service, and that some supervisors harassed, intimidated, and physically abused employees.

-- Workers have no legal right to remove themselves from dangerous workplaces without jeopardizing their continued employment, and collective bargaining agreements do not address the matter.

-- Although the Constitution prohibits child labor, child labor was a problem. Children below the minimum work age are frequently employed informally in the agricultural sector, as domestic workers and herd boys.

-- Public education is not free yet for even all primary students, though it is guaranteed in the Constitution.
-- The Constitution provides for freedom of speech, including freedom of the press, but the government has limited these rights in practice. Journalists practiced self-censorship.
-- Domestic and sexual violence against women and children is widespread. The government has debated the "Sexual Offences Bill" for a number of years. The Prime Minister has vowed it will be passed this year.
-- The house has passed legislation prohibiting trafficking in persons, and full passage is expected shortly. There were reports of trafficking of women and young girls for domestic work or commercial sexual exploitation. There is no government agency specifically responsible for combating trafficking, but it is currently handled out of the Prime Minister's office.
-- Prison conditions were generally poor, though not life-threatening.

IV. International Terrorism/U.S. National Security

A. Major Strengths Identified

-- The Central Bank of Swaziland and the Ministry of Finance, with technical assistance from the International Monetary Fund (IMF), proposed amendments to the Money Laundering and Financing of Terrorism (Prevention) Bill of 2004. The amendments will allow Swaziland to comply with regional agreements and international conventions. The proposed Money Laundering and Financing of Terrorism (Prevention) Bill of 2009 was published July 17 for public input, but has not come before Parliament yet for review.
-- In 2008, Parliament passed the Suppression of Terrorism Act.
-- The Royal Swazi Police Force (RSP) cooperates with U.S. law enforcement agencies in counter-narcotics and counter-terrorism programs. DEA provided chemicals, Global Positioning Systems, technical equipment, and training to the RSP to eradicate large clandestine marijuana fields and crops intended for export throughout African and Europe. The RSP has worked closely with DEA in the past, with great success reducing illegal crops.
-- The Umbutfo Swazi Defense Force (USDF) has a close military-to-military partnership with the U.S., despite past criticism from neighboring South Africa of this relationship (i.e. Art. 98). A Status of Forces Agreement has been signed between the U.S. and the GKOS. Swaziland is pleased with the support it has received from DOD and AFRICOM through IMET and other programs. The GKOS supports the AFRICOM concept, and hosted a successful 2009 AFRICOM MEDFLAG exercise in August.
-- The King is the Commander and Chief and Minister of Defense and presides over a civilian Principal Secretary of Defense and a Commanding General.

B. Major Issues/Problems Identified

-- The Ministry of Defense budget increased 18 percent in 2009 and the Royal Swazi Police Force increased 23 percent, in order to "fight terrorism." For the GKOS, however, this refers to suppression of Swazi political dissidents and groups perceived or declared to favor a Constitutional democracy and more ceremonial monarchy.
-- Together, the security forces consume 14.5 percent of the GKOS budget, which is more than the Ministry of Health has available to fight the HIV/AIDS pandemic. Expenditures from the security budget are generally excluded from public review, and exemptions from the GKOS procurement process are regularly approved.
-- Although the will of the GKOS is sincere for greater participation by the USDF in international peacekeeping and anti-terrorism efforts, the current capabilities and size of the force do not make it possible.

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